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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

REPLY COMMENTS OF THE JOINT PARTIES

Sunbelt Transmission Corporation and Snider Communications Corporation

(collectively the "Joint Parties), by their attorneys, hereby submit their reply comments on the Commission's Notice in the above captioned rulemaking proceeding.^{1/}

The Comments filed in this proceeding show that the Commission's proposal to auction paging spectrum on a Major Trading Area ("MTA") basis will stunt the growth of the paging industry,^{2/} harm the small businesses that currently provide paging service,^{3/} and potentially prevent paging service from reaching rural America.^{4/} While the large paging companies

1/ See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-252 (released February 9, 1996) ("Notice"). Sunbelt Transmission Corporation and Snider Communications Corporation are family-owned and operated paging companies that have been providing paging service in the state of Arkansas since 1983.

2/ See Comments of the Paging Licensees at 2.

3/ See Comments of A+ Network at 18-21.

4/ See, e.g., Comments of Rule Radiophone Service, Inc. and Robert R. Rule d/b/a Rule
(continued...)

generally support the Commission's proposal.^{5/} those companies will gain by the elimination of their numerous, small competitors. If the Commission wants to eliminate the robust competitive spirit that currently flourishes in the paging industry, it will adopt the proposals in the Notice. If, however, the Commission wants to promote small business participation in paging and encourage the spread of paging service to rural Americans it will decline to auction paging spectrum as proposed.

The Joint Parties agree with those commenters that question the Commission's statutory authority to auction paging spectrum on an MTA basis. As the commenters point out, by creating large area markets the Commission's proposal appears to be a self-fulfilling plan to create mutually exclusive situations where none would exist under current licensing rules.^{6/} Congress gave the Commission authority to auction spectrum licenses "if mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum."^{7/} Congress directed, however, that "the Commission should, in the public interest, continue to use engineering solutions, negotiation,

^{4/} (...continued)
Communications at 7-10.

^{5/} See, e.g., Comments of Paging Network, Inc.; Joint Comments of Arch Communications Group and Westlink Licensee Corporation; Comments of AT&T Wireless Services, Inc.

^{6/} See, e.g., Comments of Mashell Connect, Inc. at iii.

^{7/} 47 U.S.C. § 309(j)(1).

threshold qualifications, service rules, and other means in order to avoid mutual exclusivity."^{8/}

The auction proposal in the Notice ignores entirely this Congressional directive.

The Commission has identified no "problem" in the paging industry for which auctions are a solution; nothing in the Notice and nothing in the comments justifies the proposed wholesale departure from the current licensing rules. If, however, the Commission wants to adopt an auction proposal for paging spectrum it should retain the current transmitter-by-transmitter licensing scheme and auction spectrum only when there are mutually exclusive applications for the same license. Mutually exclusive applicants would bid to determine who gets the license. The Commission could adopt such a proposal to auction paging spectrum consistent with the intent of Congress. Auctions of illusory, Commission-manufactured mutually exclusive requests for spectrum would, however, be inconsistent with Congressional intent and contrary to law. The commenters have shown how an MTA-based license system would create conflict where none in fact exists,^{9/} and any Commission adoption of an MTA-based license system for paging would be contrary to the record, arbitrary and capricious.

Should, however, the Commission adopt a potentially illegal scheme to auction paging spectrum on an MTA-basis, the Commission must allow incumbent licensees to complete their business plans outside of the auction process. As discussed in the comments, incumbent small

^{8/} H.R. Rep. No. 111, 103rd Cong. 1st Sess. 258 (1993). See also Comments of Mobilfone Service, Inc. at 7-8.

^{9/} See Comments of Mobilfone Service, Inc. at 3 ("Thus, the Commission's proposal to adopt artificially large paging markets would cause Mobilfone to bid to provide service to markets which do not demand its service.").

business paging companies need the ability to tailor their systems to meet customer demand.^{10/}

The Joint Parties therefore support those proposals that would allow incumbent licensees to expand the interference contours of their current systems to some limited extent.^{11/}

The Commission recognized in the Notice that there are currently more than 600 licensed paging operators providing customers with varied, competitive service offerings.^{12/} Most of the large and nationwide paging companies have commented on the Notice, yet less than 15 percent of the 600 licensed companies filed comments in this docket. The Joint Parties submit that the vast majority of these silent operators would agree with the brief comments filed by one small Texas company that concluded its comments as follows:

While small carriers cannot afford PCIA membership or FCC counsel to voice our needs, we do serve the public and our subscribers will be the ones to suffer with no recourse to express their views if the freeze continues to stop system expansion and moves and license auctions for additional sites becomes the policy of the land.^{13/}

The Joint Parties urge the Commission not to auction paging spectrum, or, in the alternative, not

^{10/} Comments of PagePrompt U.S.A. at 2.

^{11/} See, Comments of Consolidated Communications Mobile Services, Inc. at 10 (proposing that all contiguous unserved areas be immediately and continually available to incumbent licensees); Comments of the Paging Coalition at 20 and Comments of Ameritech Mobile Services, Inc. at 17 (proposing that licenses for additional sites within 40 miles of one of the incumbent's previously authorized transmitter sites be available to incumbent licensees); Comments of Rule Radiophone Service, Inc. and Robert R. Rule d/b/a Rule Communications at iii (incumbent expansion should be permitted up to 25 miles in urban areas and up to 100 miles in rural areas).


^{12/} Notice at ¶ 7.

^{13/} Comments of SMR Systems, Inc. at 2.

to auction paging spectrum without allowing incumbent licensees an opportunity to complete their networks outside of the auction process.

Respectfully submitted,

**SUNBELT TRANSMISSION CORPORATION
SNIDER COMMUNICATIONS CORPORATION**

A handwritten signature in cursive script, appearing to read "Laura Phillips", is written over a horizontal line.

Laura H. Phillips
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Its Attorneys

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